

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

ROBERT MARCHESI,  
Plaintiff

v.

TWIN CITY FIRE INSURANCE  
COMPANY,  
Defendant.

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CASE NO. 4:16-cv-302

JURY TRIAL

**NOTICE OF REMOVAL**

Defendant Twin City Fire Insurance Company (“Twin City”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, files this Notice of Removal of the captioned action *Robert Marchesi v. Twin City Fire Insurance Company*, Cause No. 401-01471-2016, on the docket of the 401st Judicial District Court of Collin County, Texas. In support of this Notice of Removal, Twin City respectfully represents the following:

1. Robert Marchesi (“Plaintiff”) commenced the captioned action against Twin City on or about April 4, 2016, by filing Plaintiff’s Original Petition (the “Petition”) in the 401st Judicial District Court of Collin County, Texas.

2. A copy of all process, pleadings, and orders in the state court action are filed herewith. [See Index of Matters Being Filed: (a) Plaintiff’s Original Petition; (b) Plaintiffs’ Motion to Compel Mediation Pursuant to § 541.161 of the Texas Insurance Code and § 17.5051 of Texas Business and Commerce Code with Brief in Support of Motion to Compel Mediation; and (c) Civil Citation to Twin City dated April 5, 2016. Also filed herewith is (d) the Citation to Twin City and Service of Process Transmittal from CT Corporation with stamp of receipt by the Law Department Litigation Unit of Twin City on April 26, 2016, and (e) an unsigned Return of Service

dated April 11, 2016.]

3. The Petition avers that Plaintiff is an individual residing in Allen, Collin County, Texas. (Petition, ¶ 3).

4. The Petition alleges that “Defendant Twin City Fire Insurance Company is an foreign corporation, duly registered with the Texas Department of Insurance to do business in Texas, which may be served with process by serving this Original petition and a copy of the citation on its Registered Agent at One Hartford Plaza T 17 81, Hartford, CT 06155, or wherever it may be found.” (Petition, ¶ 4). Twin City Fire Insurance Company is an Indiana corporation with a statutory home office located at 501 Pennsylvania Parkway, Suite 400, Indianapolis, IN 46280-0014. Twin City’s main administrative office and principal place of business is One Hartford Plaza, Hartford, CT 06155-0001.

5. The Petition alleges that Plaintiff owns residential property located at 401 Ellis Street, Allen, Texas 75002 (Petition, ¶¶ 5-6), which was insured under an insurance policy issued by Twin City. The Petition alleges that on or about April 3, 2014, “the Property suffered incredible damage due to storm related conditions.” (Petition, ¶ 8) The Plaintiff alleges that he submitted a claim for the damage shortly after the storm (Petition, ¶ 9) and that Twin City failed to adequately indemnify the Plaintiff for the entire scope of the damage, among other allegations. (Petition, ¶¶ 11-20).

5. Plaintiff seeks monetary relief between \$100,000 and \$200,000. (Petition, ¶ 70) This amount satisfies the jurisdictional requirement of this Court.

6. Plaintiff requested a jury trial in the Petition. (Petition, ¶ 73)

7. Twin City was served with the Petition by certified mail, delivered to Twin City Fire Insurance Company, One Hartford Plaza T 17 81, Hartford, CT 06155, on April 26, 2016, as is indicated by the file stamp by the Law Department Litigation Unit on the Civil Citation.

8. This Notice of Removal is filed within 30 days of service of the Petition and is therefore timely under 28 U.S.C. Section 1446(b).

9. Twin City denies the underlying facts as alleged by Plaintiff or as summarized above. Further, Twin City expressly denies that it has any liability to Plaintiff.

### **DIVERSITY JURISDICTION**

10. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and this matter is therefore removable to this Court pursuant to 28 U.S.C. § 1441(a), because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs. Plaintiff resides in Collin County, Texas.

11. Twin City Fire Insurance Company is incorporated in Indiana and has its principal place of business in Connecticut.

12. The amount in controversy exceeds the jurisdictional minimum. Plaintiff seeks over \$100,000.00 in damages. (Petition, ¶ 70) Plaintiff also seeks additional damages and penalties under the DTPA, section 17.50(b)(1) and the operative provisions of the Texas Insurance Code, consequential damages, court costs, attorney's fees, prejudgment and post-judgment interest, and exemplary damages. (Petition, ¶¶ 71-72 and Conclusion & Prayer). Attorneys' fees and penalties are included as part of the amount in controversy. *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

13. Plaintiffs in Texas also are not limited to recovery of damages requested in their

pleadings, “[l]itigants who want to prevent removal must file a binding stipulation or affidavit with their complaints.” *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir.1995) (quoting *In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir.1992)). “The general principle is that Plaintiff will have to show that they are bound irrevocably by their state pleadings.” *Id.* at 1412 n.10.

14. Plaintiff did not file any binding stipulation or affidavit with the Petition.

### **REMOVAL PROCEDURE**

15. Twin City has provided notice of this removal to the clerk of the 401st Judicial District Court of Collin County, Texas, 2100 Bloomdale Road, Suite 30030, McKinney, TX 75071.

16. Pursuant to Local Rule 81, copies of the following documents are hereby provided to the clerk for filing in connection with this Notice of Removal:

- a. A list of all parties in the case, their party type and the current status of the removed case
- b. A civil cover sheet and certified copy of all pleadings that assert causes of action, all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court as required by 28 U.S.C. § 1446(a). (Undersigned counsel has requested a certified copy of the state court docket sheet and will file it upon receipt.)
- c. A complete list of attorneys involved in the action being removed, including each attorney’s bar number, address, telephone, and party or parties represented by him or her.
- d. A record of which parties have requested trial by jury; and
- e. The name and address of the court from which the case is being removed.

WHEREFORE, Twin City Fire Insurance Company hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/Martin R. Sadler

Martin R. Sadler – Lead Counsel

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Federal Id No. 18230

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the **9th day of May, 2016**, a copy of the foregoing has been served on all counsel of record in this action by electronic service or by facsimile or by U.S. Mail to:

Bill L. Voss  
Scott G. Hunziker  
Brittené V. Wilson  
The Voss Law Center  
26619 Interstate 45 South  
The Woodlands, Texas 77380

*/s/ Martin R. Sadler*\_\_\_\_\_

Martin R. Sadler